IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8093 of 1988

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANGABEN RUPABHAI

Versus

STATE OF GUJARAT

Appearance:

MR D.N PANDYA for Mr MANOJ N POPAT for Petitioner

MS KATHA GAJJAR AGP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/01/2002

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner before this Court is the widow of one Rupabhai. The said Rupabhai had died in the year 1969 leaving his widow-the petitioner, two minor sons and

one minor daughter. The said Rupabhai owned agricultural lands admeasuring 113 acres, situated at village Balotri, Taluka-Vav, District-Banaskantha. Pursuant to the amendment to the Gujarat Agricultural Lands Ceiling Act, 1960 [hereinafter referred to as, `the Act'] made effective from 1st April, 1976, the petitioner filed a declaration furnishing particulars of the lands held by her. The petitioner having held land in excess of the ceiling area, proceedings under the Act were initiated in Ceiling Case No. 182/903/76. The Mamlatdar & ALT, under his judgment and order dated 10th August, 1982, was pleased to hold that the petitioner was entitled to retain one unit of ceiling area i.e., 54 acres of land. The lands to the extent of 59 acres-17 gunthas held by the petitioner were held to be `surplus land'. Feeling aggrieved, the petitioner preferred Ceiling Appeal No. 98 of 1982 before the Deputy Collector, Tharad which was dismissed on 31st August, 1983. The Revision Application No. TEN.B.A 575/84 preferred before the Gujarat Revenue Tribunal was also dismissed on 30th October, 1986. The petitioner since then preferred Review Application No. TEN.C.A No. 10/87 before the Tribunal which too was rejected on 14th June, 1988. Feeling aggrieved, the petitioner has preferred the present petition.

The extent of holding of the petitioner is not in dispute. The question, however, is whether the petitioner on the specified date had a major son, as was argued before the authorities below which should entitle such major son to retain one unit of ceiling area in addition to the entitlement of the petitioner to retain one unit of the ceiling area. The other question that arises is whether on the death of the above referred Rupabhai, lands held by him stood notionally partitioned under the proviso to section 6 of the Hindu Succession Act, 1956 and that each of the members of the family should be held to be entitled to retain one unit of the ceiling area.

Mr. Pandya has submitted that in support of the claim that the petitioner had, on the specified date, a major son, the petitioner had produced a medical certificate of age issued by the Civil Surgeon. The medical certificate issued by the civil surgeon is a public document within the meaning of section 74 of the Evidence Act and ought to have been relied upon by the authorities below. Inspite of the said medical certificate, claim made by the petitioner has wrongly been rejected by both the authorities below and the Tribunal as well. He has also submitted that on the death of the said Rupabhai, the share of each of his

heirs in his property became crystalized and each of them was entitled to retain one unit of the ceiling area. In support of his argument, he has relied upon the judgements of this Court in the matters of J.D Jadeja v. State of Gujarat [2000 (1) All India High Courts 2111]; of Alarakhiben Yakubbhai v. State of Gujarat & Anr., [1994 (2) GCD 28]; of Sheth Chinubhai Chimanlal vs. State of Gujarat & Anr., [1982 (1) GLR 317]; and of Pannaben Rameshchandra Shethji v. State of Gujarat, [1996 (1) GLR 529].

In the matter of J.D Jadeja [Supra], this Court has held that while considering the applicability of the Act, the provisions of the Hindu Succession Act should also be relevant and should be considered. In the mater of Ala Rakhiben Yakubbhai [Supra], the matter pertains to the question of joint family as defined in Section 2 (16) of the Act and how it should be construed with respect to a muslim family. The learned Judge has held that, `mere proof that petitioner and respondent no. 2 were living together was not sufficient in order to make them a joint family. It was required to be established that by custom or usage, they were joint in estate or residence.' In the matter of Sheth Chinubhai Chimanlal [Supra], the question was that of computation of total holding of a person, the Court held that, `if such person has also a share in the joint family, such share of the individual should also be considered. If such individual is a member of the family but not a member of a joint family, land held by him is liable to be clubbed with the land held by his spouse or minor sons and minor daughters.' In the matter of Pannaben Ramesh Shethji [Supra], the question was that of clubbing together of the lands held by the members of the Hindu Undivided Family where the partition of the property had taken place prior to the specified date. The Court held that, "a `Hindu family' can be said to be undivided, if the properties are not partitioned. As transpire from the records of the case, the properties in the hands of the petitioner were partitioned or divided in 1971 in accordance with the principles of succession embodied in the Hindu Succession Act, 1956. In that view of the matter, holding of the daugther could not have been clubbed with or included in the holding of the petitioner for the purpose of the Act.'

Be it noted that the contention that the certificate of age issued by the Civil Surgeon is a public document, as envisaged in Section 74 of the Indian Evidence Act, 1872 requires to be rejected without further deliberation. Both the authorities below and the

Tribunal have recorded a finding that the petitioner on the specified date had two minor sons. In fact, this is an admitted fact. The petitioner has, in her declaration disclosed that on the specified date, she had two minor sons and a minor daughter. Moreover, even in the application for review made before the learned Tribunal, the petitioner had in no uncertain words admitted that on the specified date, she had two minor sons and a minor daughter. The petitioner, therefore, cannot now be permitted to argue that she had a major son who individually was entitled to retain a unit of the ceiling area.

The next question is whether on the death of the said Rupabhai, the said lands stood partitioned amongst the coparceners, as envisaged in Explanation I to the provisio to section 6 of the Hindu Succession Act, 1956. It would not be out of place to mention here that it is not the case of the petitioner nor it has been brought on the records of the matter that there was actual partition of the properties between the coparceners of the said Rupabhai and his heirs. It is also not disputed that the coparceners of the said Rupabhai and his heirs ie., the petitioner herein and her minor sons and the minor daughter were, even after the death of the said Rupabhai, joint in estate and residence.

The word, `person' has been defined in Section 2 (21) of the Act as, `person includes a joint family'. The words, `joint family' are defined in section 2 (16) of the Act as, `joint family means an undivided Hindu Family and in the case of other persons, a group of unit, the members of which by custom or usage are joint in estate or residence.' Sub-section (1) of Section 6 of the Act provides inter alia that, `no person shall be entitled to hold, whether as an owner or a tenant or partly as owner or tenant, land in excess of the ceiling area.' The word, `person' occuring in sub-section (1) of Section 6 of the Act is required to be construed keeping in view the definition of the words, `person' and the `joint family' occurring in Section 2 of the Act. The petitioner and her minor sons and minor daughter, who admittedly are the members of a Hindu Family and on the specified date were joint in estate and residence, should be considered to be a `person' not entitled to hold lands in excess of the ceiling area. The question has been decided by the Hon'ble Supreme court in the matter of State of Maharashtra v. Narayan Rao Sham Rao Deshmukh & Ors., [AIR (1985) SC 716]. In the said case, one Sham Rao Deshmukh died in the year 1957 leaving large area of lands to his mother, his widow and the minor son. In the

proceeding initiated under Maharashtra Agricultural Lands [Ceiling on Holdings] Act, 1961, a claim was made that the property of the late Sham Rao stood partitioned amongst the coparceners in accordance with the Explanation I to the proviso to section 6 of the Hindu Succession Act, 1956. Each of the said persons, therefore, was entitled to hold one unit of the ceiling area. The contention was rejected by the Hon'ble Supreme Court. The Court held that, "we have already seen that a `person' includes `family' for the purposes of the Ceiling Act and the members of a family cannot hold more than one unit of ceiling area." The Court further held that, `the High Court having held that after the death of Sham Rao, the joint family of Narayan Rao, Sulochanabai and Gangabai continued and that there was nothing to show that Narayan Rao, Sulochanabai and Gangabai separated in residence after the death of Sham Rao, erred in holding that each of them was entitled to hold separte unit of ceiling area, in the circumstances of this case.' The Court further held that, `in the circumstances of the case, we are of the view that Narayan Rao, Sulochanabai and Gangabai @ Taibai were together entitled to retain only one unit of the ceiling area.' The question thus being decided by the Hon'ble Supreme Court requires to be answered accordingly. I, therefore, hold that the petitioner alongwith her minor sons and minor daugher constituted a family, entitled to hold not more than one unit of the ceiling area. The claim for additional one unit of the ceiling area or a separate unit of ceiling area for eachof the said members of the family is wholly unsustainable and requires to be rejected.

In the result, the petition is dismissed. Rule is discharged. Interim releif is vacated. Learned advocate Mr. Pandya requests that the interim relief be extended further. The request is granted. Interim relief operating pending this petition shall be continued for a period of six weeks from today.

[Miss R.M Doshit, J.]

Prakash*